

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE

RICHARD LYNN NORTON

v.

STATE OF TENNESSEE

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NO. 2:04-CV-362

MEMORANDUM OPINION

This *pro se* petition for a writ of habeas corpus, 28 U.S.C. § 2254, was filed on September 28, 2004 by Richard L. Norton, a state prisoner who has filed a previous § 2254 petition. *See Norton v. State of Tennessee*, Civil Action No. 2:04-cv-43, filed February 2, 2004. Both petitions challenge the same 1999 Greene County cocaine convictions. In the prior habeas corpus petition, the respondent submitted a dispositive motion, arguing that Mr. Norton had failed to exhaust his state remedies because some of his federal claims had been advanced in a coram nobis petition, which was still pending in the state courts.

In this instant petition, Mr. Norton alleges, as grounds for relief, that:

1) there has been unreasonable delay on the part of the state appellate court in deciding his appeal in his petition for a writ of error coram nobis;

2 and 3) the issues offered in the coram nobis action were previously raised and exhausted in his state post-conviction petition; and

4) those same issues have been presented as federal claims in the § 2254 case which is presently pending before this Court.

It is clear, from the summary of the claims offered in support of this instant petition, that Mr. Norton has not filed a true § 2254 petition, but, rather a response to the dispositive motion submitted by the respondent in Civil Action No. 2:04-cv-43. This is so because all “grounds” raised in the instant petition pertain to the exhaustion defense, which has been advanced in the respondent’s motion to dismiss Mr. Norton’s prior (and still pending) § 2254 petition

Accordingly, because this is not an actual petition for a writ of habeas corpus but, in substance, a response to a motion filed in an entirely different case, this “petition” will be **DISMISSED** without prejudice. Mr. Norton is **ADVISED** that, if he wishes to respond to a motion filed by the respondent in Civil Action No. 2:04-cv-43, the appropriate method of filing such a response is to label it as such and to indicate, in the caption, the

case number in which the response is intended to be filed—not to disguise it as a brand new § 2254 petition.

ENTER:

s/Thomas Gray Hull
THOMAS GRAY HULL
SENIOR U. S. DISTRICT JUDGE